

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| UNITED STATES OF AMERICA, | : | CIVIL ACTION NO. 1:05-CV-2053 |
| | : | |
| Plaintiff | : | (Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| JOHN KOSCINSKI and ANTOINETTE | : | |
| F. KOSCINSKI, | : | |
| | : | |
| Defendants | : | |

MEMORANDUM

The David Wills House (“Wills House”) is a majestic, three story, federal-style brick building that stands on the eastern corner of the town square in Gettysburg, Pennsylvania. Built circa 1816, the structure was originally a one-story building housing various merchant shops. In 1839 it was converted into the “American Hotel,” and twenty years later became the property of David Wills, a prominent attorney—and later county judge—who added two stories to the building and used it as his residence and law office.¹ Although the almost 200 year-old building is historically significant in its own right, it is renowned as the quarters of President Abraham Lincoln on November 18, 1963. Lincoln was a guest of the Wills House the night before he delivered the “Gettysburg Address,” his now famous dedication of a national cemetery on the grounds of the Battle of Gettysburg. Indeed, scholars still debate the extent to which Lincoln penned the extraordinary speech in the

¹ See Through Hallowed Ground: Adams County, David Wills House, <http://www.hallowedground.org/jthg/view-269.html> (last visited Feb. 14, 2006).

Wills House.² (See Docs. 1, 14.)

In October 2000 the Wills House became part of the Gettysburg National Military Park, and in March 2004 the Borough of Gettysburg sold the property to the National Park Service for \$550,000. (See Doc. 1, Ex. 1 ¶ 3; Doc. 14 at 3.) The historic site's popularity prompted Congress to appropriate approximately \$5.5 million for its renovation. The Wills House attracted over 10,000 visitors in 2005 and, according to a commissioned study, the proposed renovations will attract an additional 140,000 visitors annually.³

Adjacent to the David Wills House sits a two-story building owned by the defendants in this case, John and Antoinette Koscinski ("Koscinskis"). The first floor of this property is occupied by a commercial entity, and the second floor is comprised of apartments. The Koscinski property and the David Wills House share a common, or "party," wall.⁴ In October 2005 the United States commenced the

² See Abraham Lincoln Online, Historic Places Wills House, <http://showcase.netins.net/web/creative/lincoln/sites/wills.htm> (last visited Feb. 14, 2006); American Treasures of the Library of Congress, First Draft of Gettysburg Address, <http://www.loc.gov/exhibits/treasures/trt034.html> (last visited Feb. 14, 2006).

³ (See Gov't Ex. 11.)

⁴ See Sobien v. Mullin, 783 A.2d 795, 798 (Pa. Super. Ct. 2001) ("A party wall may be defined generally as a wall located upon or at the division line between adjoining property landowners and used or intended to be used by both in the construction or maintenance of improvements on their respective tracts, or . . . as a dividing wall for the common benefit and convenience of the tenements which it separates. . . . A distinctive feature of a party wall is that the adjacent buildings are so constructed that each derives its support from the common wall." (quoting 40 AM. JUR. *Party Walls* § 2 (1942))).

instant lawsuit, seeking an injunction to gain access to the Koscinski property for the purposes of repairing the common wall and renovating the Wills House. (See Doc. 1.) Following a telephone conference with counsel the court directed briefing on the appropriateness of an injunction, and a hearing was held on the matter on January 24, 2006.⁵ At the hearing the Koscinskis did not present any evidence and conceded the propriety of injunctive relief.⁶

The requirements for preliminary injunctive relief are well settled. The moving party must establish that (1) there is a reasonable probability of success on the merits, (2) irreparable injury will result without injunctive relief, (3) granting the injunction will avoid a comparably greater injury than denying it, and (4) the injunction is in the public interest. See BP Chems., Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 263 (3d Cir. 2000); see also Acierno v. New Castle County, 40 F.3d 645, 653 (3d Cir. 1994); Neo Gen Screening, Inc. v. TeleChem Int'l, Inc., 69 F. App'x 550, 554 (3d Cir. 2003); Bieros v. Nicola, 857 F. Supp. 445, 446 (E.D. Pa. 1994). While each factor need not be established beyond doubt, they must combine to show the immediate necessity of injunctive relief. See Swartzwelder v. McNeilly, 297 F.3d 228, 234 (3d Cir. 2002); see also Walgreen Co. v. Sara Creek Prop. Co., 966

⁵ The hearing was initially scheduled to commence on December 15, 2005 (see Doc. 9), but was postponed due, in part, to the withdrawal of defendants' original counsel. (See Docs. 15, 19; see also Docs. 25, 26.)

⁶ Proposed orders recently submitted by the parties differ only in the parameters of the injunctive relief. (Compare Doc. 29, with Doc. 30.) Because the Koscinskis have acknowledged the propriety of injunctive relief, the court will set forth its findings in summary fashion.

F.2d 273, 275-79 (7th Cir. 1992) (Posner, J.); 11A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2948.3 (3d ed. 1998).

With respect to the first factor, the likelihood of success on the merits, defendants acknowledge that the United States has a right to enter the Kosciński property to repair those areas common to the Wills House.⁷

As to the second factor—that irreparable injury would result without the issuance of an injunction—there is ample evidence that irreparable harm will ensue if access to the Kosciński property is denied. Extensive and credible testimony was provided by Dr. John Latschar, the superintendent of Gettysburg National Military Park, and by Mr. Paul Newman, an architect specializing in historical renovations who is employed by the National Park Service. These witnesses opined that the David Wills House is in a severe state of deterioration, no longer structurally sound, and in violation of fire and safety codes. The testimony and evidence reflect that the house is in need of immediate repair: the chimney is

⁷ Under Pennsylvania law, rights of access to party-wall property are governed by statutory or regulatory authority. See Sobien, 783 A.2d at 798 (“Party wall rights did not exist at common law. Rather, such rights are granted to adjoining landowners by statute”); see also Jackman v. Rosenbaum Co., 106 A. 238 (Pa. 1919) (discussing history of “party wall” doctrine, and noting that rights of entry are derived from laws and regulations enacted by virtue of police power of state); id. at 240 (“[Regulations governing party walls] are primarily designed to guard life and property; and the theory which sustains these laws as police statutes seems to be that in thickly populated cities there is a constant menace from fire, against which they serve as common protection.”); Hoffstot v. Voigt, 23 A. 351, 351-52 (Pa. 1892) (“The regulation of party-walls is a very ancient form of exercise of the police power [b]ut such regulation . . . is an interference with the rights and enjoyment of the property, sustainable only on the police power, and therefore to be governed and measured by the strict extent of the statutory grant.”).

collapsing under its own weight, the roof is sagging, chinks are forming in and bricks are missing from the common wall in the attic, and beams and rafters are rotting. Mr. Newman testified that it is doubtful whether the rafters are of sufficient strength to withstand typical wind and snow loads.

In the basement of the Wills House the common wall is eroding and the masonry is crumbling into piles of dust. The foundation is exposed in various areas, underscoring the lack of structural support, and wooden support posts, sitting on a dirt floor, are rotting. The soil around these columns is loose, and the area is in need of underpinning—at least one column has already failed. The electrical wiring is antiquated and substandard, water pipes are suspended from the ceiling by duct tape, and the property lacks a firewall to afford protection to the adjoining properties. Based upon the evidence of record, the court finds that, absent prompt preservation efforts, this historic site will continue to deteriorate and suffer from “localized” failures, and that such repairs cannot be made without access to defendants’ property.⁸

With respect to the third and fourth factors for injunctive relief—that granting the injunction will avoid a comparably greater harm and is in the public

⁸ The court notes that over \$1.5 million has already been expended on this project. Plaintiff estimates that the dispute *sub judice* has caused a delay in the renovations that will cost the government \$360,000. But cf. Acierno, 40 F.3d at 653 (stating that “economic loss does not constitute irreparable harm”); Frank’s GMC Truck Ctr., Inc. v. Gen. Motors, 847 F.2d 100, 102 n.3 (3d Cir. 1998) (stating that where money damages are available injunctive relief is inappropriate because “the applicant has an adequate remedy at law”); Liveware Publ’g Inc. v. Best Software Inc., 125 F. App’x 428, 433 (3d Cir. 2005) (same).

interest—the evidence demonstrates that injunctive relief will bring minimal harm to the Koscinskis while preserving an historic landmark for public use. The scheduled renovations will affect only the basement, attic and roof, and alleyway of the Koscinski property. Renovations in the basement are estimated to take three to five months to complete. Renovations to the attic and roof should be completed in two to three months. Work requiring access to the alleyway will be sporadic. With the unavoidable exception of occasional noise, the renovations will not unduly interfere with the activities of the tenants in the Koscinski property. Moreover, the government's renovation contracts appropriately ensure the repair of any damage to the Koscinski's property. Finally, it noteworthy that these renovations will confer on the Koscinski property a structural improvement benefit valued in excess of \$130,000.

As conceded by defendants, the facts of this case weigh heavily in favor of granting injunctive relief. The time to begin preservation of this significant national landmark is upon us. Let the work begin in accordance with the following order.⁹

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

Dated: February 14, 2006

⁹ The court notes that the granting of preliminary injunctive relief is likely dispositive of this matter. Accordingly, the court will direct the parties to show cause why it should not invoke the provisions of Rule 65(a)(2) and deem this an adjudication on the merits.

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| JOHN KOSCINSKI and ANTOINETTE | : | |
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ORDER

AND NOW, this 14th day of February, 2006, upon consideration of plaintiff's motion (Doc. 13) for injunctive relief, and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that the motion (Doc. 13) is GRANTED as follows:

1. Defendants John Koscinski and Antoinette Koscinski and any person(s) acting under their direction or pursuant to their authority are ENJOINED from interfering with the reasonable access of plaintiff, or any person(s) acting under its direction or pursuant to its authority, to the structure located at 17 York Street, Gettysburg, Pennsylvania, for the purpose of effecting repairs to plaintiff's structure located at 7 Lincoln Square, Gettysburg, Pennsylvania.
2. Plaintiff shall proceed with its project in accordance with the plans, drawings, and descriptions as presented to the court, and shall take all reasonable precautions to minimize the impact of its renovation project on defendants' premises, and the use of defendants' premises. Without limiting the generality of the foregoing, plaintiff shall take affirmative steps to resolve at its sole expense the following points of concern as identified during the January 24, 2006 hearing:
 - a. Upon termination of the common access entry to the basement of defendants' building, plaintiff shall provide a suitable alternate basement entryway, stairs, and secure door or other closure for defendants' basement, at a location that is compliant

with the requirements of the Borough of Gettysburg.

- b. For the duration of the project, so long as work impacts or affects the reasonable use and enjoyment of defendants' property, and the means of ingress and egress thereto, plaintiff shall be responsible for providing property protection and physical security in the areas under construction and affected by construction.
 - c. Plaintiff shall provide for its own separate sanitary sewer line, and shall properly terminate the common sewer line.
 - d. Within a reasonable time of removal of the fire escape serving the second floor rear of defendants' building, plaintiff shall provide an alternative means of fire escape from the second floor.
3. Plaintiff shall provide to defendants and their tenants reasonable notice of the schedule and duration of project activities.
4. Plaintiff shall require its contractors to indemnify defendants from any loss, damage, or liabilities, which may be caused by or otherwise arise from its renovation project. This indemnification shall be limited to the insurance coverage required by applicable law.
5. Should disputes arise with respect to any of the provisions contained herein, or with respect to the implementation of any such provision, either party may request a conference with the court, which shall retain jurisdiction over this matter until the completion of the renovation project.
6. The parties shall, on or before February 28, 2006, show cause why this memorandum and order should not be deemed an adjudication on the merits. See FED. R. CIV. P. 65(a)(2). In the absence of such showing this order shall be deemed an adjudication on the merits.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge